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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/750,716	01/02/2001	Francois Cottard	05725.0825-00	1011

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EXAMINER

KOSS, ANN MARIE

ART UNIT PAPER NUMBER

1751

DATE MAILED: 04/02/2002

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Please find below and/or attached an Office communication concerning this application or proceeding.

MFA

Office Action Summary

Application No.

09/750,716

Applicant(s)

COTTARD ET AL.

Examiner

Ann-Marie Koss

Art Unit

1751

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02 January 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-88 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-19, 24-34, 39, 40, 43, 45-47, 49-52 and 54-88 is/are rejected.
- 7) ☒ Claim(s) 20-23, 35-38, 41, 42, 44, 48 and 53 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 1. 6) ☐ Other:

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. Claim 4 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 4 is indefinite because it is redundant in the phrase "is chosen from fatty alcohols" of line 2 in the claim. Correction is required.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

4. Claims 1-19, 24-34, 39, 40, 43, 45-47, 49-52, and 54-88 are rejected under 35 U.S.C. 103(a) as being unpatentable over Grollier et al. (U.S. Patent No. 5,009,880) in view of Dupuis (U.S. 6,214,326).

The primary reference of Grollier et al. teaches a cosmetic hair composition that can contain known hair dye components for dyeing hair, contains a polymer, an acrylic terpolymer, a polyglycerolated fatty alcohol (see col. 38, line 1-33, col. 48 line 66-col. 49 line 43, and col. 51 line 55-66). Grollier et al. further teaches a composition that contains reducing agents such as sulphites and thioglycollates (see col. 55 line 5-10); surface agents in an amount up to 10% by weight (see col. 52, line 64-66 and col. 54 line 15-17); thickeners in an amount from 0.5 to 30% by weight (see col. 54 line 38-53); an oxidation dye, a coupling substance, an oxidizing agent, and an oxidation base and their salts (see col. 52 line 27- 63); contains fatty alcohols and polyglycerolated fatty alcohols comprising 12 to 18 carbon atoms in a quantity of 0.5 to 25% weight relative to the total weight of the composition (see col. 51 line 35-43 and line 55-65); an anionic, cationic, amphoteric or nonionic polymer which is present in the amount of 3 to 20% by weight relative to the total weight of the composition (see col. 52 line 62-col. 53 line 5); has a pH of 9 to 11 (see col. 52 line 17-25); and a method of using the composition, (see col. 59 lines 30-35 and Examples).

Grollier et al. generically teaches an acrylic terpolymer, however fails to teach the specific acrylic terpolymer as claimed as well as failing to teach a composition packaged as a kit.

The secondary reference of Dupuis in related art teaches a cosmetic hair composition that can be used to dye hair (see col. 13 lines 22-27) and contains a thickening, acrylic terpolymer (see Abstract). The acrylic terpolymer comprises: a) about 20 to 70% by weight of a carboxylic acid containing alpha, beta-monoethylenic unsaturation; b) about 20 to 80% by weight of a non-surfactant monomer containing monoethylenic unsaturation, which is different from a), and c) about 0.5 to 60% by weight of a nonionic urethane monomer which is the product of reaction of a monohydric nonionic surfactant with a monoisocyanate containing monoethylenic unsaturation, (see Abstract and col. 1 lines 54-58). Dupuis also teaches a composition that contains the acrylic terpolymer as well as the cationic polymers each present in the cosmetic composition in concentrations ranging from 0.01 to 20% by weight relative to the total weight of the composition (see col. 3 line 31-34, and col. 12 lines 24-27); that thickening polymers contain a hydrophilic part and a hydrophobic part consisting of a fatty chain (see col. 1 line 26-29); a compound containing any copolymerizable unsaturation such as acrylic or methacrylic unsaturation or an allylic unsaturation imparted by allyl alcohol can be used to form a

monomeric residue (see col. 2 line 60-62); the fatty chain of the thickening polymer is a terpolymer of maleic acid (see col. 2 line 5-9); and that the compositions can be packaged in various forms (see col. 13 line 29-31).

Therefore, in view of the teaching(s) of Dupuis, one skilled in the art would be motivated to modify the primary reference by combining a terpolymer and a polyglycerolated fatty alcohol with dyestuffs in a composition for the treatment of keratin fibers that contains a polymer and would expect the composition to act similarly when utilized to oxidatively dye hair with a composition containing a thickening polymer. Such a modification would have been obvious to one of ordinary skill at the time the invention was made to utilize a thickening, acrylic terpolymer as disclosed by Dupuis and would be expected to have similar properties.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to formulate a composition and method for dyeing hair which entails combining a terpolymer and a polyglycerolated fatty alcohol with dyestuffs, optimize the proportions of ingredients through routine experimentation for best results, then package the composition in a two compartment kit because such compositions fall within the scope of those as taught by Grollier et al. and Dupuis. Furthermore, the prior art has made the suggestion to use any amount of oxidizing agents. Therefore, as to optimization results, a patent will not be granted based on the optimization of result effective variables when the optimization is obtained through routine experimentation unless there is a showing of unexpected results that properly rebuts the prima facie case of obviousness.

With respect to claims 78-86 which are drawn to a kit, it would have been obvious to one of ordinary skill in the art at the time the invention was made to package the oxidizing agent and the oxidation dye components in separate devices as claimed for storage.

Allowable Subject Matter

5. Claims 20-23, 35-38, 41, 42, 44, 48 and 53 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Neither Grollier et al. nor Dupuis, alone or in combination, teach a composition with monomeric residues chosen from formula (II) as claimed wherein R_3 is chosen from $C_{12}-C_{22}$

alkyl groups. Moreover, neither reference teaches double bases as an oxidation base and their subsequent nitrogen-containing groups as claimed; heterocyclic bases as claimed; the amount that oxidation bases are present in the composition; and the presence of oxidation-reduction enzymes as claimed.


Conclusion

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. These references are considered cumulative to or less material than those discussed above.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ann-Marie Koss whose telephone number is (703) 305-3176. The examiner can normally be reached on Mondays-Fridays 7:30am-4:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Yogendra Gupta can be reached on (703) 308-4708. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 305-6078 for regular communications and (703) 872-9310 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.


YOGENDRA N. GUPTA
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 1700

AMK

March 25, 2002